Bar Malaysia v HF Vitality (Malaysia) Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S5-22-191 OF 2002
ABDUL MALIK ISHAK J
2 JANUARY 2003

Legal Profession *— Practice of law — Unauthorized person — Defendant a private limited company engaged in the business of general trading — Whether defendant can be recognized as qualified persons — Whether defendant can apply for a practising certificate and a sijil annual — Legal Profession Act 1976 ss 29, 30, 31 & 32*

The plaintiff is a body corporate established under the Legal Profession Act 1976 ('the Legal Profession Act 1976'). The defendant is a private limited company incorporated under the Companies Act 1965 and purportedly engaged in the business of general trading. The defendant, through its agents, servants and/or employees, inter alia, advertised and offered to members of the public, legal services under the caption 'The Rights Program'. The plaintiff, in order to safeguard the interests of the legal profession and to protect the members of the public from the likes of the defendant, sought, inter alia, a declaration that the defendant was an unauthorized person under ss 36(1) and 37 of the Legal Profession Act 1976 and that an injunction be granted to restrain the defendant from continuing to advertise its provision of legal services to members of the public and carrying on and/or engaging in the provision of legal services to members of the public.

Held, allowing the application:

(1) Companies, whether it is a private limited company like the defendant here, cannot, in law, apply for a practising certificate and a sijil annual. Such restrictions can be found in ss 30, 31 and 32 of the Legal Profession Act 1976. Therefore, the defendant, its agents, its servants and its employees cannot be recognized as: (a) qualified persons under s 3 of the Legal Profession Act 1976; (b) advocates and solicitors of the High Court of Malaya whose names would appear on the Roll and having valid practising certificates under s 36(1) of the Legal Profession Act 1976; (c) having entered in the annual Register of Practitioners by the Registrar of the High Court of Malaya under s 31 of the Legal Profession Act 1976; and (d) persons or bodies to whom the Registrar of the High Court of Malaya has issued a practising certificate under s 29 of the Legal Profession Act 1976 (see pp 158H–159B).

(2) There was no way in which the defendant, its servants, its agents and its employees could pass themselves off as advocates and solicitors because they were not persons or bodies to whom the Bar Council had issued sijil annuals under s 32 of the Legal Profession Act 1976. The legal services which the defendant rendered to the members of the public were only capable of being performed by advocates and solicitors of the High Court of

Malaya and no one else. On the facts, the defendant had prima facie committed a breach of the Act (see p 159C–D, H).

[Bahasa Malaysia summary

Plaintif adalah satu badan korporat yang ditubuhkan di bawah Akta Profesyen Undang-Undang 1976 ('Akta Profesyen Undang-Undang 1976'). Defendan adalah satu syarikat sendirian berhad yang ditubuhkan di bawah Akta Syarikat 1965 dan dikatakan terlibat dalam perniagaan dagangan awam. Defendan, melalui ejen-ejen dan/atau pekerja-pekerjanya, antara lain, telah mengiklan dan menawarkan kepada orang awam, perkhidmatan undang-undang di bawah tajuk 'The Rights Program'. Plaintif, bagi tujuan melindungi kepentingan profesyen undang-undang dan untuk melindungi orang awam daripada defendan, telah memohon, antara lain, satu deklarasi bahawa defendan adalah seorang yang tidak diberi kuasa di bawah ss 36(1) dan 37 Akta Profesyen Undang-Undang 1976 dan agar satu injunksi diberikan bagi menghalang defendan daripada terus mengiklankan peruntukan perkhidmatan undang-undangnya kepada orang awam dan menjalankan dan/atau melibatkan diri dalam peruntukan perkhidmatan undang-undang kepada orang awam.

Diputuskan, membenarkan permohonan tersebut:

(1) Syarikat-syarikat sama ada ia adalah satu syarikat sendirian berhad seperti defendan di sini, tidak boleh, dalam undang-undang, memohon satu sijil amalan dan sijil tahunan. Batasan tersebut boleh didapati dalam ss 30, 31 dan 32 Akta Profesyen Undang-Undang 1976. Oleh itu, defendan, ejen-ejennya dan pekerja-pekerjanya tidak boleh dikenali sebagai: (a) orang yang layak di bawah s 3 Akta Profesyen Undang-Undang 1976; (b) peguambela dan peguamcara Mahkamah Tinggi Malaya yang mana nama-nama mereka akan tertera dalam Daftar dan mempunyai sijil-sijil amalan sah di bawah s 36(1) Akta Profesyen Undang-Undang 1976; (c) telah dimasukkan dalam Daftar Pengamal-Pengamal tahunan oleh Pendaftar Mahkamah Tinggi Malaya di bawah s 31 Akta Profesyen Undang-Undang 1976; dan (d) individu-individu atau badan-badan yang mana Pendaftar Mahkamah Tinggi Malaya telah mengeluarkan satu sijil amalan di bawah s 29 Akta Profesyen Undang-Undang 1976 (lihat ms 158H–159B).

(2) Defendan, pekerja-pekerjanya dan ejen-ejennya tidak dapat dikenali sebagai peguambela dan peguamcara kerana mereka bukanlah individu atau badan yang Majlis Peguam mengeluarkan sijil-sijil tahunan di bawah s 32 Akta Profesyen Undang-Undang 1976. Perkhidmatan undang-undang yang defendan berikan kepada orang awam hanya layak dilaksanakan oleh peguambela dan peguamcara Mahkamah Tinggi Malaya dan bukan selain dari

A itu. Berdasarkan fakta-fakta, defendan telah prima facie melakukan satu perlanggaran Akta tersebut (lihat ms 159C–D, H).]

Notes

B For cases on unauthorized persons under the legal profession, see 9 *Mallal's Digest* (4th Ed, 1999 Reissue), paras 1674–1678.

Cases referred to

Lam Kong Co Ltd v Thong Guan Co (Pte) Ltd [1985] 2 MLJ 429 (refd)
C *Wan Salimah bte Wan Jaffar v Mahmood bin Omar (Anim bte Abdul Aziz, Intervener)* [1998] 5 MLJ 162 (refd)
Young v Thomas [1892] 2 Ch 134 (refd)

Legislation referred to

D Rules of the High Court 1980 O 13 r 6, (1), O 19 r 7, (1)
Legal Profession Act 1976 ss 3, 29, 30, 31, 32, 35(1), 36(1), 37

Rishwant Singh (*Shearn Delamore & Co*) for the plaintiff.

Abdul Malik Ishak J:

E *Facts of the case*

The plaintiff is a well known entity in Malaysia. It is a body corporate established under the Legal Profession Act 1976 (Act 166) ('the Legal Profession Act 1976') and it has its address at the 10th Floor, Wisma Kraftangan, No 9, Jalan Tun Perak, 50050 Kuala Lumpur.
F

The defendant is an obscure private limited company incorporated under the Companies Act 1965 on 21 December 1998 and has a share capital and is purportedly engaged in the business of general trading. The defendant has its registered address at No 40-2, Tingkat 2, Jalan 14/48A, Off Jalan Sentul, Sentul Raya, 51000 Kuala Lumpur. The defendant has a
G business address at No 26B, Jalan Tengku Ampuan Zabedah K, Seksyen 9, 40100 Shah Alam, Selangor Darul Ehsan.

The plaintiff's statutory objects as stated under the Legal Profession Act 1976 may be itemized, inter alia, as follows:

H (1) to represent, protect and assist members of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia;

(2) to protect and assist the public in all matters be it ancillary or incidental to the law; and

I (3) to promote good relations and social intercourse amongst members of the Malaysian Bar and between members of the Malaysian Bar and other persons concerned in the administration of law and justice in Malaysia.

There was evidence emanating from Mr Cheng Poh Heng, an advocate and solicitor of the High Court of Malaya and a member of the plaintiff, that august body, that the defendant was plying its trade which encroached into the legal profession of the country. Indeed on 22 July 2001, the defendant at the Mines Shopping Fair at Jalan Dulang, off the Mines Resort City, 43300 Seri Kembangan, Selangor Darul Ehsan through its agents, servants and/or employees did, inter alia, advertise and offer to members of the Malaysian public legal services under the caption 'The Rights Program' and these legal services covered wide ranging topics in the following areas:

(1) road traffic accidents;
(2) airport arrest;
(3) debt recovery;
(4) workers' compensation;
(5) assault, battery, homicide and bail;
(6) embezzlement;
(7) possession of illicit drugs and narcotics;
(8) possession of illegal weapons, firearms and illegal goods;
(9) drunk driving;
(10) domestic violence;
(11) family court matters, including polygamy;
(12) will and probate matters;
(13) appeals;
(14) breach of contract;
(15) criminal breach of trust;
(16) medico-legal;
(17) tort;
(18) consumer rights and defective goods;
(19) motor vehicle repossession;
(20) unauthorized withdrawal from bank account;
(21) sale and purchase of property;
(22) domestic inquiry;
(23) insurance claims;
(24) unfair dismissal; and
(25) sexual discrimination and sexual harassment.

The defendant also advertised to the members of the public that it:

(a) provided advice on broad and specialized areas of the law including corporate legal advice, advice on syariah law, tax, investment and audit; and

(b) was the only law-related entity, being the first of its kind to operate in the region, providing affordable legal remedy and redress to members of the public.

The defendant launched vigorous advertising. It printed and distributed pamphlets, leaflets and/or other advertising materials to the public in order to promote its services to the members of the public. The defendant even went to the extent of prescribing the following prescribed fees:

Types	Annual Fees (Individual)	Annual Fees (Family)
Silver	RM450	RM500
Gold	RM750	RM800
Platinum	RM1,050	RM1,050
Corporate	RM2,500	Not Available

Mr Cheng Poh Heng was not pleased with the antics of the defendant and so he reported to the Secretary of the Bar Council Malaysia as to what he saw at the Mines Shopping Fair. His letter was dated 23 July 2001 and it can be seen in exh 'RS-1' to the plaintiff's first affidavit in encl 6 that was affirmed on 6 May 2002 and it was worded in this way:

> CHENG POH HENG & CO
> Advocates & Solicitors Peguambela & Peguamcara
> 146-2A Jalan Tun Sambanthan, 50470 Kuala Lumpur.
>
> Telephone: 03-22742673 Facsimile: 03-22601146
>
> Cheng Poh Heng LL.B (Hons) London CLP M.C.S.M.
>
> Our Ref: CPH/RIGHTS/0703/01
> Your Ref:
>
> Date: 23rd July 2001
>
> The Secretary
> Bar Council Malaysia
> 10th Floor Wisma Kraftangan
> No 9 Jalan Tun Perak
> 50050 KUALA LUMPUR
>
> Dear Sir,
>
> RE: 'THE RIGHTS' — HF VITALITY (M) SDN BHD ('the Company')
>
> On Sunday, 22 July 2001, at about 2.30pm, at the Mines Shopping Fair, I observed a backdrop with the following words 'Khidmat Kaunseling Undang-Undang: Percuma' fronted by a long table where four males (one of them in a jacket) were seated. Four chairs for consultation were suitably placed in front of the table for those who needed counselling. An empty space of two yards separated this table from another six rows of chairs, and which served as a waiting area. There were at least 25 female promoters handing out leaflets to shoppers. Response from shoppers was poor though. I was not spared the handout and handed three leaflets, which are attached herewith for your kind reference.

There was certainly nothing wrong in promoting free counselling services, but on perusing these leaflets, I perceived sinister motives behind such promotion. The promoters were in fact selling Silver, Gold, Platinum and Corporate Memberships for Annual Fees ranging from RM450 to RM2,500. The 'services' or 'nasihat dan bantuan undang-undang' as listed in these leaflets are normally offered by legal firms. Intrigued by this so-called 'THE RIGHTS' movement, I enquired from one of the male promoters (who did not wish to be identified), under what auspices the Company operated. He agreed with me that the Company is not a legal firm (a private limited company cannot be!), but it has some lawyers in its employment. I then asked him whether the Company is acting as an agent, he again agreed, and that he and the other promoters were employed as agents to recruit members for the Company's 'services'. However, he went one step too far by comparing their 'services' as similar to that offered by the Bar Council's Legal Aid Centre, which was of course, utterly ludicrous. I immediately voiced my strongest objections to such a comparison, as there could not be a more unlikely comparison than this. I further asked him who were the 'renowned and highly respected lawyers (and public figures) who sit on the advisory board, panel and committee who are well-versed in the finer points of law?' He of course blithely refused to name these 'eminent lawyers' in the 'only law-related entity and the first of its kind to operate in this region'. It is fervently hoped that this is the last we hear of such an entity! The sooner, the better, lest more such entities commence operations with gay abandon to the detriment of our honourable profession. This seems to me a clear case of 'corporate touting', contrary to what the promoters claim!

I therefore seek the Bar Council's views on whether 'THE RIGHTS' movement has its act right in the first place and secondly, whether it is acting in compliance with the applicable laws.

Yours faithfully,

Sgd (Illegible).
Cheng Poh Heng
Enc: 3

Mr Cheng Poh Heng's letter was certainly thought provoking. Something must be done to prevent the erosion of the legal profession by unscrupulous groups. So the plaintiff in order to safeguard the interests of the legal profession and to protect the members of the public from the likes of the defendant, proceeded to file a summons in chambers in encl 7 and sought for the following prayers:

Let all parties concerned attend before the Judge in Chambers on the day of , 2002 at am/pm on the hearing of an application on the part of the plaintiff abovenamed for judgment pursuant to O 13 r 6 and O 19 r 7 Rules of the High Court 1980 and pursuant to the inherent jurisdiction of this Honourable Court on the following terms —

(1) a declaration that —
   (a) the defendant is an unauthorized person under s 36(1) and s 37 of the Legal Profession Act 1976 (Act 166) (Laws of Malaysia); and
   (b) the defendant is in breach of s 37 of the Legal Profession Act 1976 (Act 166) (Laws of Malaysia) by advertising, offering to act and purporting to act and/or having acted as an advocate and solicitor of the High Court of Malaya.

A (2) An injunction be granted to restrain the defendant whether by itself, its agents, servants and/or employees or otherwise from:

(a) continuing to advertise its provision of legal services to members of the public in breach of s 37 of the Legal Profession Act 1976 (Act 166) (Laws of Malaysia);

(b) carrying on and/or engaging in the provision of legal services to members of the public in breach of s 37 of the Legal Profession Act 1976 (Act 166) (Laws of Malaysia); and

(c) in any manner whatsoever, directly or indirectly soliciting clients or customers for the purpose of providing and/or acting or performing such functions and/or providing such legal services or functions ordinarily provided to the public by an advocate and solicitor of the High Court of Malaya.

(3) costs of this application and this suit to be paid by the respondent/defendant to the applicant/plaintiff; and

(4) such further or other relief as this Honourable Court deems fit.

It would be germane to state categorically that encl 7 was filed pursuant to:

D (a) O 13 r 6 of the Rules of the High Court 1980 ('RHC');

(b) O 19 r 7 of the RHC; and

(c) the inherent jurisdiction of the court.

The legal semantics

E That the writ of summons and the statement of claim — both dated 22 February 2002, have been served on the defendant at the defendant's registered and business addresses on 19 March 2002. The affidavit of service of Thomas Peters affirmed on 19 March 2002 and filed on 20 March 2002 as seen in encl 3 would serve as proof of service of these two F documents — referring to the writ of summons and the statement of claim. That the defendant had not entered an appearance within time. On 15 May 2002, the defendant served onto the plaintiff's solicitors with its memorandum of appearance dated 29 April 2002 which was purportedly filed on 3 May 2002 as seen in encl 5. The plaintiff acted swiftly and by way of a summons in chambers in encl 9, the plaintiff applied to the court to set G aside the memorandum of appearance that was entered by the defendant. On 7 August 2002, the deputy registrar allowed the plaintiff's application in encl 9 and this meant that the defendant's memorandum of appearance had been set aside.

It must be emphasized that the prayers in encl 7 were an exact replica H of the reliefs which the plaintiff claimed in its statement of claim.

Since the legal papers were in order and nothing was amiss, the plaintiff stood on firmer ground when it relied on O 13 r 6 of the RHC to apply to this court by way of a summons in chambers in encl 7 for final judgment. It would be ideal to reproduce in extenso O 13 r 6 of the RHC:

I Other claims (O 13 r 6)

(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to enter an appearance, the

plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had entered an appearance.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 62 rule 10, be served on the defendant against whom it is sought to enter judgment.

Reference should also be made to O 19 r 7 of the RHC which states that:

Default of defence: Other claims (O 19 r 7)

(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, apply to the Court for judgment, and on hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may —

(a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

(b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

(3) An application under paragraph (1) must be by summons or motion.

Now, the very nature of the plaintiff's application in encl 7 as well as the plaintiff's statement of claim in encl 2 which were, inter alia, for declarations and injunctions, and the fact that the plaintiff had succeeded in its application in encl 9 to set aside the defendant's memorandum of appearance would mean that the plaintiff has to 'proceed with the action as if (the) defendant had entered an appearance'. This would certainly be the right approach as it falls squarely within the province of O 13 r 6(1) of the RHC. It must be emphasized that the defendant had not filed its statement of defence, and that being the case, it was part and parcel of my judgment that the matters alleged in the statement of claim must, in law, stand proved and admitted. Indeed this must be the legal position because O 19 r 7(1)of the RHC states, inter alia, that where the defendant 'fails ... to serve a

defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, apply to the court for judgment, and on the hearing of the application the court shall give such judgment as the plaintiff appears entitled to on his statement of claim'. I must now refer to the *Malaysian Court Practice* published by the Malayan Law Journal Sdn Bhd (2001 Ed), where it carries useful write-ups on the scope of O 13 r 6 of the RHC. At pp 262–263 of the *Malaysian Court Practice*, the learned authors wrote:

> This rule deals with all other cases which do not fall within rr 1–4 of this Order. Where it includes other claims not falling within rr 1–4, the plaintiff is precluded from entering judgment in default in every case and this rule requires him to proceed with the action as if that defendant had appeared. The plaintiff is, however, free to elect which relief (eg account, injunction, specific performance, declaration or rectification or other remedy or relief falling outside the types of claims under rr 1–4) he wishes to pursue or even abandon all these claims and obtain final judgment or final judgments and interlocutory judgment, as the case may be, for the appropriate claim or claims falling within rr 1–4.
>
> After being served with the statement of claim under this rule, the action proceeds as if the defendant had entered appearance at the proper time and he must serve a defence. If he does not do so, the plaintiff, after waiting 14 days, can move the court or apply for summons for judgment in default of defence. The statement of claim will stand admitted and the plaintiff will obtain such judgment as he is entitled to thereon (O 19 r 2(1)). The court has a discretion as to the order it will make (*Charles v Shepherd* [1892] 2 QB 622) and also over the costs of the action (*Young v Thomas* [1892] 2 Ch 135).
>
> The philosophy underlying O 13 r 6(1) is that specific relief is, by its very nature, discretionary. A defendant may well decide not to defend an action in which such relief is claimed in the honest belief that he has no defence upon the question of liability. But that does not relieve the plaintiff from delivering his statement of claim and satisfying the court, upon a motion for judgment, that the case is a fit one for the grant of specific relief. Therefore, a defendant who has failed to enter an appearance to an action for specific relief is not precluded from contending at the hearing of the motion for judgment that the particular case is one which discretion should be exercised against the plaintiff and that specific relief ought to be denied. Order 13 r 6(1) exists to preserve the discretion of the court in actions for specific relief despite the non-appearance of the defendant. *Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor* [1997] 2 MLJ 565.

In regard to the pre-requisite of the rule, this was what the learned authors of the *Malaysian Court Practice* said at p 263 thereof:

> (1) There must be an affidavit of service filed, and (2) if a statement of claim has not been indorsed on the writ, a statement of claim must first be served on the defendant, under O 62 r 6 or O 62 r 10: *Dyeks v Thomson* (1909) WN 104; *Minton v Metcalf* (1877) 46 LJ Ch 584. Then the plaintiff may proceed as if the defendant had entered an appearance, ie either under O 14 for summary judgment or after the lapse of the time for the delivery of a defence, under O 19 r 7, for default of defence.

I will now refer to some authorities.

In *Lam Kong Co Ltd v Thong Guan Co (Pte) Ltd* [1985] 2 MLJ 429, the then Supreme Court (Abdul Hamid Omar CJ (Malaya), Wan Suleiman SCJ, George Seah SCJ) was concerned with the respondents' claim for specific performance of a contract for the sale of land and the then Supreme Court held that where the writ filed by the respondents was a specially indorsed writ for specific performance and the respondents had not abandoned the relief sought, the respondents were required to proceed with the action as though the appellants had appeared. At p 430 of the report, Abdul Hamid Omar CJ (Malaya) aptly said when delivering the judgment of the then Supreme Court:

> The next step for the respondents to take, indeed what the respondents ought to have done is to set down the action on motion for judgment. At the hearing of the motion, the Court would have to consider judgment as upon the statement of claim the Court or the Judge should consider the plaintiff to be entitled (see Order 27 rule 11 of the RSC 1957 [Rules of the Supreme Court 1957]).

In *Wan Salimah bte Wan Jaffar v Mahmood bin Omar (Anim bte Abdul Aziz, Intervener)* [1998] 5 MLJ 162, I had this to say at p 169 of the report which must surely apply to the case at hand:

> The defendant did not file his statement of defence even though he was served with the writ of summons together with the statement of claim indorsed therein on 17 May 1993 at 3.30pm. An affidavit of service in encl 8 clearly shows that service of the writ with the statement of claim was indeed served on the defendant. A memorandum of appearance dated 22 May 1993 and filed by Tetuan Kadir & Co on 24 May 1993 in encl 10 shows that the defendant intends to defend the action and this brings into sharp focus O 18 r 2(1) of the Rules of the High Court 1980 ('the RHC') which reads as follows:
>
> > 'Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.'
>
> This rule clearly provides that the defendant who enters an appearance and intends to defend must serve a defence; it recognizes beyond doubt that the plaintiff must first have served his statement of claim. The effect of this rule can simply be stated as follows: the defendant must serve his defence within 14 days after the time limited for appearance or after the statement of claim is served on him, whichever is the later. Thus, it is correct to say that a defence is served by virtue of the rule as set out in the RHC and not by an order from the court.
>
> Here, the defendant failed to file his statement of defence and he runs foul of O 18 r 2(1) of the RHC.
>
> Since the defendant failed to serve a defence on the plaintiff, the latter has the right to apply to the court for judgment and on the hearing of the application, the court shall give such judgment as the plaintiff appears entitled to on her statement of claim (O 19 r 7(1) of the RHC). It must not be forgotten that this rule applies in the context of the plaintiff and the defendant and not to third party proceedings (O 16 r 5 of the RHC). The default in serving a defence by the defendant cannot be followed by judgment without

A an order for the simple reason that the plaintiff must apply for judgment by summons or motion (O 19 r 7(3) of the RHC). Unfortunately, the plaintiff was not properly advised and there was therefore no application by summons or motion to obtain judgment in default of defence.

Fortunately, here there was an application by way of encl 7 pursuant to, inter alia, O 19 r 7 of the RHC as alluded to earlier.

B In *Young v Thomas* [1892] 2 Ch 134, it was held, inter alia, that when a plaintiff moved for judgment in default of a defence under O XXVII r 11, the judge in deciding the issues between the parties must look to the statement of claim and nothing else. Lindley LJ delivering a separate judgment said at p 136 of the report:

C In the present case we have seen a note of the learned judge's judgment, and it is clear that he proceeded under Order XXVII, rule 11, which provides that if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and 'such judgment shall be given as upon the statement of claim the Court or a judge shall consider the plaintiff to be entitled to'. Upon this order, it was contended that he had no D jurisdiction at all to deprive the plaintiff, as the successful party, of his costs. But Order XXVII, rule 11, is not the only rule that must be looked at; Order LXV, rule 1, which is specifically addressed to the question of costs, must be also considered. Looking at both those rules, I am of opinion that the proper interpretation of Order XXVII, rule 11, is that, so far as the rights of the plaintiff and the relief claimed in the action are concerned, the judge is to look E to the statement of claim and nothing else; but, with regard to the question of costs, there is nothing in that rule to deprive the judge of the discretion which is given him by Order LXV, rule 1; and the judge has as much discretion in cases which come under Order XXVII, rule 11, as in any other case. There is, therefore, no want of jurisdiction in the judge, and the point of law raised by the appellant in that respect fails.

F Bowen LJ, also writing a separate judgment for the Court of Appeal, said at p 137 of the report:

> There is no doubt that, in determining the rights of the parties in the action, the statement of claim alone is to be looked to, and the reason of this rule is obvious, namely, that the facts stated therein are taken to be admitted by the G defendant; and, as has been decided by Lord Justice Kay in *Smith v Buchan* [36 W R 631], no evidence can be admitted as to those facts.

Thus, on the strength of these authorities, it was not wrong for the plaintiff to proceed with the action as if the defendant had entered an appearance and this court must 'in determining the rights of the parties in the action' look only at the statement of claim in encl 2 and nothing else. And I did just that.

H

Was the plaintiff entitled to judgment?

I would answer this question in the affirmative. This brings into sharp focus the provisions of the Legal Profession Act 1976. Section 35(1) of the Legal Profession Act 1976 enacts as follows:

I Right of Advocate and Solicitor

(1) Any advocate and solicitor shall, subject to this Act and any other written law, have the exclusive right to appear and plead in all Courts of Justice

in Malaysia according to the law in force in those Courts; and as between themselves shall have the same rights and privileges without differentiation.

(2) Nothing herein contained shall affect the right which is hereby declared of —

(a) legal officers, whose duties so require them to do, and qualified persons appointed temporarily to perform the duties of legal officers to appear and plead on behalf of the Government in the Courts;

(b) the Public Trustee, Official Assignee, Assistant Public Trustees and Assistant Official Assignees to appear and plead in the Courts under any written law relating to such offices; and

(c) existing pleaders.

An 'advocate and solicitor' under s 3 of the Legal Profession Act 1976 is defined in this manner:

> 'advocate and solicitor', and 'solicitor' where the context requires means an advocate and solicitor of the High Court admitted and enrolled under this Act or under any written law prior to the coming into operation of this Act.

What the defendant did at the Mines Shopping Fair was intolerable. The acts of the defendant there were the subject matter of the complaint by the plaintiff in this suit. As demonstrated, the defendant had advertised its preparedness to provide services of a legal nature to unsuspecting and gullible members of the public. The services rendered by the defendant were those services that were and are normally provided for by legally qualified and trained advocates and solicitors. The letter from Mr Cheng Poh Heng speaks volumes for the misdeeds of the defendant. The acts of the defendant at the Mines Shopping Fair were beyond redemption.

It cannot be denied that the defendant is a private limited company and so pursuant to s 37 of the Legal Profession Act 1976 it can be said that the defendant is an 'unauthorized person'. It is interesting to note that under s 37 of the Legal Profession Act 1976, any 'unauthorized person' who purports to act as an advocate and solicitor or pretends to carry out the functions of an advocate and solicitor shall be guilty of an offence. I can do no better than to reproduce that section verbatim and I do so now:

> No unauthorized person to act as advocate and solicitor
>
> (1) Any unauthorized person who —
>
> (a) acts as an advocate and solicitor or an agent for any party to proceedings or in any capacity, other than as a party to an action in which he is himself a party, sues out any writ, summons or process, or commences, carries on, solicits or defends any action, suit or other proceedings in the name of any other person in any of the Courts in Malaysia or draws or prepares any instrument relating to any proceedings in any such Courts; or
>
> (b) wilfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified or authorized to act as an advocate and solicitor, or that he is recognized by law as so qualified or authorized,
>
> shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand five hundred ringgit or to imprisonment for a term not exceeding six months or to both.

A (2) Without prejudice to the generality of subsection (1), any unauthorized person who either directly or indirectly —

(a) draws or prepares any document or instrument relating to any immovable property or to any legal proceedings or to any trust; or

(b) takes instructions for or draws or prepares any document on which to found or oppose a grant of probate or letters of administration; or

B (c) draws or prepares any document or instrument relating to the incorporation or formation of a limited company; or

(d) on behalf of a claimant or person alleging himself to have a claim to a legal right writes, publishes or sends a letter or notice threatening legal proceedings other than a letter or notice that the matter will be handed to an advocate and solicitor for legal proceedings; or

C (e) solicits the right to negotiate, or negotiate in any way for the settlement of, or settles, any claim arising out of personal injury or death and founded upon a legal right or otherwise,

shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence under this subsection.

D (3) Any unauthorized person who offers or agrees to place at the disposal of any other person the services of an advocate and solicitor shall be guilty of an offence under this subsection:

Provided that this subsection shall not apply to any person who offers or agrees to place at the disposal of any other person the services of an advocate and solicitor pursuant to a lawful contract of indemnity or insurance.

E (4) Every person who is convicted of an offence under subsection (2) or (3) shall, on conviction, be liable for the first offence to a fine not exceeding five hundred ringgit or in default of payment to imprisonment for a term not exceeding three months and for the second or subsequent offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

F (5) Any act done by a body corporate which if done by a person would be an offence under subsection (1), (2) or (3) or is of the nature or in the manner as to be calculated to imply that the body corporate is qualified, or recognized by law as qualified, to act as an advocate and solicitor shall be an offence under this section and the body corporate shall, on conviction, be liable for the first offence to a fine not exceeding one thousand ringgit and for the second or subsequent offence to a fine not G exceeding three thousand ringgit and where the act is done by a director, officer or servant thereof the director, officer or servant shall, without prejudice to the liability of the body corporate, be liable to the punishment provided in sub-s (4).

(6) Where any firm does an act which if done by a person would be an offence H under subsection (1), (2) or (3) every member of the firm shall be deemed to have committed the offence unless he proves that he was unaware of its commission.

(7) Any person who does any act in relation to a contemplated or instituted proceeding in the High Court which act is an offence under this section shall also be guilty of a contempt of the Court in which the proceeding is I contemplated or instituted and may be punished accordingly irrespective of whether he is prosecuted for the offence or not.

and its sting can be felt even when one reads the section in its entirety.

In para 8 of the statement of claim, the plaintiff has pleaded that the defendant is an unauthorized person. In its original text, para 8 of the statement of claim is worded in this way:

> The plaintiff contends that the defendant, its agents, servants and/or employees are unauthorized persons under the Act.

This averment remains on record. This averment sets out the fact that the defendant is an unauthorized person and that fact stands proved, in the circumstances, in the absence of the defendant filing its defence.

It must be emphasized that under s 36 of the Legal Profession Act 1976, an advocate and solicitor must have his name on the Roll of Practitioners and have a valid practising certificate authorizing him to act as an advocate and solicitor. And under s 36(1) of the Legal Profession Act 1976, a person who is not so qualified is referred to as an 'unauthorized person.' I should for completeness reproduce verbatim s 36(1) of the Legal Profession Act 1976 which is very relevant to the matter at hand:

> Advocate and solicitor to have name on the Roll before practice
>
> (1) Subject to this section, no person shall practise as an advocate and solicitor or do any act as an advocate and solicitor unless his name is on the Roll and he has a valid practising certificate authorizing him to do the act; a person who is not so qualified is in this Act referred to as an 'unauthorized person'.

Reference to s 30 of the Legal Profession Act 1976 should also be made. There it states and provides for disqualification from applying for a practising certificate. In its original text, it enacts as follows:

> Disqualification for practising certificate
>
> (1) No advocate and solicitor shall apply for a practising certificate —
>
> (a) unless he is practising or intends to practice either on his own account or in partnership in Malaysia; or
>
> (b) unless he is or is about to be employed full time in his practice in Malaysia by an advocate and solicitor or a firm of advocates and solicitors in practice in Malaysia; or
>
> (c) if he is gainfully employed by any other person, firm or body in a capacity other than as an advocate and solicitor.
>
> (2) For the purpose of this section a qualified person shall not be construed as being gainfully employed if he is serving in the Judicial and Legal Service.
>
> (3) Any qualified person who is gainfully employed in accordance with paragraph [(c)] of subsection (1) shall surrender his practising certificate to the Registrar.

And I must say this. That a company whether it be a private limited company like the defendant here cannot, in law, apply for a practising certificate and a sijil annual. Such restrictions can be found in ss 30, 31 and 32 of the Legal Profession Act 1976.

Flowing from all these legal niceties, my findings would be as follows. That the defendant, its agents, its servants and its employees cannot be recognized as:

(1) qualified persons under s 3 of the Legal Profession Act 1976;

(2) advocates and solicitors of the High Court of Malaya whose names would appear on the Roll and having valid practising certificates under s 36(1) of the Legal Profession Act 1976;

(3) having entered in the annual Register of Practitioners by the Registrar of the High Court of Malaya under s 31 of the Legal Profession Act 1976;

(4) persons or bodies to whom the Registrar of the High Court of Malaya has issued a practising certificate under s 29 of the Legal Profession Act 1976.

There was no way in which the defendant, its servants, its agents and its employees could pass themselves off as advocates and solicitors at the Mines Shopping Fair because they were not persons or bodies to whom the Bar Council had issued sijil annuals under s 32 of the Legal Profession Act 1976.

The legal services which the defendant rendered to the members of the public at the Mines Shopping Fair as alluded to in the early part of this judgment were only capable of being performed by advocates and solicitors of the High Court of Malaya and no one else. It was part and parcel of my judgment that the defendant, its agents, its servants and its employees were unauthorized persons under the Legal Profession Act 1976 when:

(1) they purported to practise and advertise their services as advocates and solicitors of the High Court of Malaya at the Mines Shopping Fair;

(2) they purported to perform and advertise such acts, services, and functions which ordinarily and typically would be performed and carried out by advocates and solicitors of the High Court of Malaya at the Mines Shopping Fair; and

(3) they offered and advertised their services to members of the public for reward at the Mines Shopping Fair.

Unless restrained, the defendant, its agents, its servants, and its employees would continue to advertise, perform, and provide legal services to members of the public in the way they did and that would bring about dire consequences. The declarations and the injunctions that were sought for in encl 7 would signal a warning to others similarly inclined as the defendant not to dabble with any business that run counter to the Legal Profession Act 1976. On the facts, it was my judgment that the defendant had prima facie committed a breach of the Legal Profession Act 1976.

For the reasons adumbrated above, I gave an order in terms of the application in encl 7, particularly prayers 1(a), 1(b), 2(a), 2(b), 2(c), and 3 thereto.

Application allowed.